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April 16, 1993

BY OVERNIGHT MAIL

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 93-36

Dear Ms. Searcy:

Enclosed for filing please find an original plus nine (9) copies of the Reply Comments of RCI Long Distance, Inc. in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Tariff Filing Requirements for Nondominant Common Carriers	CC Docket No. 93-36

REPLY COMMENTS OF
RCI LONG DISTANCE, INC.

RCI Long Distance, Inc.[1/] submits this reply to the comments received on the Commission's Notice in this proceeding.[2/] Most parties agree that the Commission should apply maximum streamlined regulation where competitive conditions so warrant.[3/] Certain parties have raised three principal objections to the Commission's proposals: (1) the Commission may not authorize the filing of maximum rates or ranges of rates;[4/] (2) the Commission should not permit

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1/ RCI Long Distance, Inc. is an indirect, wholly-owned subsidiary of Rochester Telephone Corporation.

2/ Tariff Filing Requirements for Nondominant Common Carriers, CC Dkt. 93-36, Notice of Proposed Rulemaking, FCC 93-103 (released Feb. 19, 1993) ("Notice").

3/ E.g., Comptel at 3; MFS at 4-5; Ameritech at 5.

4/ AT&T at 3-10; see also Bell Atlantic at 8-9; NYNEX at 5-7.

tariffs of nondominant carriers to become effective on one day's notice;[5/] and (3) the Commission should prohibit nondominant carriers from referencing, in their tariffs, the rates contained in the tariffs of any other carrier.[6/] These claims lack merit.

First, the claim -- based largely upon precedent under the Interstate Commerce Act ("ICA") -- that the Commission may not authorize the filing of maximum rates or ranges of rates is incorrect. The courts have made clear that, although the ICA is instructive as to the scope of this Commission's authority under the Communications Act, the scope of the two Acts are not coextensive.[7/] Moreover, under an analogous statute -- the Natural Gas Act -- the courts have sanctioned the use of banded rates established by the Federal Energy Regulatory Commission.[8/] The ICA precedent cited by AT&T and others is simply inapplicable to the scope of this Commission's authority under section 203 of the Commission's Act.

5/ See, e.g., NYNEX at 8-10.

6/ Department of Justice at 1-2.

7/ Am. Tel & Tel. Co. v. FCC, 503 F.2d 612 (2d Cir. 1974); see also Sea-Land Service v. ICC, 738 F.2d 1311, 1318 n.11 (D.C. Cir. 1984).

8/ Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988).

Moreover, nothing in the Communication Act precludes the Commission from permitting nondominant carriers to file ranges of rates or maximum rates. Section 203(a) of the Act requires common carriers to file schedules of their charges.[9/] Section 203(b)(2) provides that "[t]he Commission may, in its discretion and for good cause shown, modify any requirement" of section 203(a).[10/] By permitting nondominant carriers to file maximum rates or ranges of rates, the Commission would properly exercise the discretion afforded to it under section 203(b)(2). Such action would not run afoul of the court's conclusion in AT&T[11/] -- the case in which the court invalidated the Commission's forbearance doctrine -- that the Commission lacks the authority to waive entirely the provisions of section 203(a). By adopting the proposed rule, the Commission would merely be modifying the current tariff rules as they would apply to nondominant carriers.

9/ 47 U.S.C. § 203(a).

10/ 47 U.S.C. § 203(b)(2) (emphasis added).

The only exception is that the Commission may not extend the tariff notice period of section 203(b)(1) of the Act beyond 120 days. Id.

11/ Am. Tel. & Tel. Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992).

In addition, adoption of such a rule would not undermine any of the policy objectives embodied in the Communications Act. AT&T contends that customers will not be able to know whether they are being subjected to unreasonable

may file formal complaints under section 208 of the Communications Act. Similarly, the Commission itself may investigate the lawfulness of any tariff and order revisions thereto to conform to the requirements of the Communications Act.[16/] Indeed, that the Commission has been compelled only once to reject a tariff filing of a nondominant common carrier[17/] strongly suggests that the adoption of a one-day notice period will not undermine any principles embodied in the Communications Act.

Third, the claim that the practice of nondominant carriers of referencing the rates of other carriers inhibits price competition[18/] is incorrect. Market forces today require smaller interexchange carriers to offer services that may be virtually identical to those offered by larger carriers and to be able to compare their rates to those of the larger carriers. Thus, even if smaller carriers are prohibited from referencing other carriers' rates in their tariffs, such a rule would not preclude the practice of offering services that are

Not only is the proposed rule unworkable, it is also counterproductive. Its principal effect would be to increase the costs incurred by smaller carriers. If cross-referencing rates is prohibited, smaller carriers that offer such discounted services would need to amend their tariffs every time a carrier such as AT&T changes its rates. At four hundred ninety dollars per tariff filing, the proposed rule could significantly increase smaller carriers' costs of doing business. Such a result would actually inhibit price competition.

For the foregoing reasons, the Commission should adopt the proposals set forth in the Notice.

Respectfully submitted,

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April 16, 1993

(2472K)

Certificate of Service

I hereby certify that, on this 16th day of April, 1993, the foregoing Reply Comments of RCI Long Distance, Inc. were served by first-class mail, postage prepaid, upon the parties on the attached service list.

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